IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

JAMES NICHOLSON,

      Petitioner-Defendant,

v.   **Criminal Action No. 3:09-cr-13**
                                                (Judge Bailey)

UNITED STATES OF AMERICA,

      Respondent-Plaintiff.

ORDER GRANTING MOTION TO WITHDRAW WRIT OF CORAM NOBIS

On this day, the above-styled criminal action came before this Court upon consideration of the Motion to Withdraw Writ of Coram Nobis [Doc. 62]. On August 13, 2012, Petitioner-Defendant James Nicholson ("Petitioner"), proceeding *pro se* and an inmate at F.C.I. Edgefield in Edgefield, South Carolina, filed a Petition for Writ of Error Coram Nobis [Doc. 58].

By Order dated August 14, 2012, this Court found that because the petitioner is currently in custody and will remain in custody until his projected release date of December 8, 2018, he is not eligible for *coram nobis* relief. Therefore, this Court found that the petition should properly be construed as a motion made pursuant to 28 U.S.C. § 2255. As such, this Court notified the petitioner if its intent to recharacterize the Petition for Writ of Error Coram Nobis as a Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255.
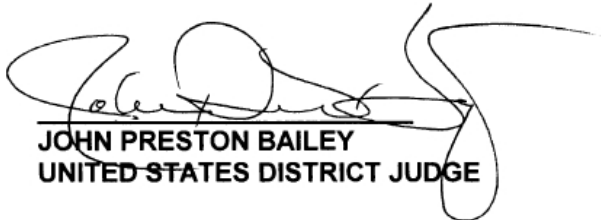
In so doing, this Court provided the petitioner additional time to inform whether he objects to the Court recharacterizing his Petition as being brought pursuant to § 2255 or if he wishes to "withdraw the motion or amend it so that it contains all the [Section] 2255

claims he believes he has." **Castro**, 540 U.S. at 383. In the instant motion, it is apparent

the petitioner has chosen the latter. Accordingly, having reviewed the same, the Motion

to Withdraw Writ of Coram Nobis **[Doc. 62]** is hereby **GRANTED**, and the Petition for Writ

of Error Coram Nobis **[Doc. 58]** is hereby **ORDERED WITHDRAWN**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and

to mail a copy to the *pro se* petitioner.

DATED: September 4, 2012.

JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE